IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 30892 of 2005(C)

PETITIONER:

KATHREENA GREGORY, W/O.LATE
OUSEPH GREGORY, NADUVILAPARAMBIL, THUMPOLY P.O.,
ARYAD SOUTH, ALAPPUZHA DT.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. UNION OF INDIA REPRESENTED BY THE
SECRETARY, MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTERS' DIVISION, LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI-110 003.

2. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, GENERAL ADMINISTRATION (FFP.A),
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI.T.SANJAY, CGC
GOVERNMENT PLEADER SRI. K.V. MANOJKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 30892/2005 C

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PROCEEDINGS OF THE DIST. COLLECTOR, ALAPPUZHA VIDE NO. H2/59340/2003 DT. 8/1/2004.

EXT.P2. COPY OF THE APPLICATION BY THE PETITIONER DT. 2/8/05 TO THE RESPONDENTS.

EXT.P3. COPY OF THE AFFIDAVIT DULY ATTESTED BY THE JUDICIAL IST CLASS MAGISTRATE ALAPPUZHA DT. 2/8/05.

EXT.P4. COPY OF THE NARC BY THE SUPDT. OF POLICE, ALAPPUZHA DT. 11/8/05.

EXT.P5. COPY OF THE NARC BY THE CJM COURT, ALLEPPEY.

EXT.P6. COPY OF THE PKC BY THE ISSUED BY SRI. H.K. CHAKRAPANI DT. 1/8/05.

EXT.P7. COPY OF THE ORDER OF SANCTION OF SSS PENSION VIDE NO. 119/PVS/104/ 99-FF SZ DT. 18/6/03.

EXT.P8. COPY OF THE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM IN RESPECT OF SRI. H.K. CHAKRAPANI.

RESPONDENT'S EXHIBITS

NIL.

True copy

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T.R. RAMACHANDRAN NAIR, J.

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WP(C).No. 30892 OF 2005-C.

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Dated this the 21st day of August, 2007.

J U D G M E N T

The petitioner is an applicant for grant of Swathantrata Sainik Samman pension. Her late husband Sri.Ouseph Gregory was a freedom fighter who had actively participated in the Punnapra-Vayalar movement. An arrest warrant was issued against him by the Special Magistrate Court, Alappuzha in case No.P.E.7/1122 M.E. and in order to evade the arrest he had gone underground for a period of about ten months from 8.3.1122 M.E. to 9.1.1123 M.E. and as such he was entitled to get the benefit of SSS pension. He was granted the State pension as per order of the District Collector, Alappuzha dated 23.3.1994. He died on 13.6.2003 and the petitioner is getting the dependent family pension as per Ext.P1 order. Ext.P2 is the application submitted by the petitioner for grant of Central pension. Exts.P4 and P5 are the non-availability of records certificate issued by the Superintendent of Police, Alappuzha and the Chief Judicial Magistrate Court, Alappuzha in case No.P.E.7/1122 M.E. Ext.P6 is the personal knowledge certificate issued by Sri.H.K.Chakrapani and Exts.P7 and P8 are the order of sanction of SSS pension to him and the true copy of the extract of the convict register of Central Prison in respect of him. The petitioner has approached this Court seeking for a direction to the 2nd respondent to forward their verification-

cum- recommendation report.

2. In the counter-affidavit filed on behalf of the 2nd respondent it is stated that the petitioner has not produced any documentary evidence for proving her claim. In para.5 it is admitted that the petitioner's husband was sanctioned Kerala Freedom Fighters' Pension considering his claimed participation in the Punnapra-Vayalar struggle and as per the recommendation of the District Advisory Committee. It is also admitted that the petitioner is receiving the family pension after his death.

3. The recommendation, it appears, was not made relying on two facts. The first one is that in the application for State pension the period he had remained underground is shown as 25.10.1946 to 20.12.1947. But in the application for Central pension the underground life is claimed upto 24.8.1947. It is, therefore, averred that the claim is doubtful. The question is whether the said approach made is correct in the light of the facts emerging from the records produced in this case.

4. Heard Sri.T.Sanjay, learned Central Government Standing Counsel, who was filed a counter-affidavit on behalf of the Union Government also and the learned Government Pleader for the State.

5. In the application produced here the period of underground suffering is mentioned as ten months from 8.3.1122 M.E. to 9.1.1123 M.E. to evade arrest in case No.PE.7/1122 ME. In the personal knowledge certificate

Ext.P6 the same period has been mentioned. The period of six months alone is sufficient to grant of pension. Therefore, if at all there is a mistake in the application of the husband of the petitioner about the date namely, 20.10.1947 as he had already been granted pension by the State Government by Ext.P1 his claim as a bonafide freedom fighter cannot be disputed. That his application for sanction of pension was recommended by the District Advisory Committee is admitted in para.5 of the counter-affidavit. Therefore, merely because of a minor mistake in the date, the recommendation should not have been withheld. Further, the period mentioned in the application is supported by the personal knowledge certificate issued by Sri.H.K.Chakrapani.

6. The other objection is that the non-availability of records certificate is not acceptable. A reference to the non-availability of records certificate from the Chief Judicial Magistrate Court shows that all the details have been mentioned therein. When the freedom fighter has claimed the certificate based on a particular case number and when the Court has certified that the records of the year mentioned have already been destroyed it is a clear case where the non-availability of records certificate has been certified by the said Court. The Superintendent of Police has also certified the non-availability of the records.

7. Therefore, there will be a direction to the 2nd respondent to

forward the verification cum entitlement report to the 1st respondent especially in the light of Ext.P1 order granting State pension and in the light of the documents produced by the petitioner within a period of six weeks from the date of receipt of a copy of this judgment. On receipt of the same the first respondent shall pass appropriate orders on merits within a further period of two months. The entitlement of the petitioner for grant of pension from the date of receipt of the application also will be considered.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

kvs/-